

(1955) 03 PAT CK 0005

In the Patna High Court

Case No : Misc. Judicial Case No. 117 of 1954

Gaya Prasad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-03-1955

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)
Railway Establishment Code — Rule 135

Citation : AIR 1955 Patna 305

Hon'ble Judges : Das, C.J.;Ahmad, J

Bench : Division Bench

Advocate : Bindeshwari Prasad Sinha, for the Appellant; Govt. Advocate and P.K. Bose, for the Respondent

Final Decision : Dismissed

Judgement

Ahmad J.

1. This is an application under Art. 226 of the Constitution of India by one Gaya Prasad for the issue of an appropriate writ restraining the opposite parties from enforcing the order dated 7-2-1953, passed by Mr. A. K. Sarkar, Superintendent Transportation, whereby the petitioner has been removed from service and also for an order directing them to reinstate the petitioner and pay his dues from 9-2-1953 up to the date of his reinstatement on holding that the order dated 7-2-1953 is illegal and ultra vires.

2. The opposite parties in the suit are three, namely, (1) Union of India through the General Manager, Eastern Railway, Howrah; (2) Divisional-Superintendent, Dinapur, Eastern Railway and (3) Superintendent Transportation, Dinapur, Eastern Railway.

3. On 7-3-1953 when the order of his dismissal was passed, the petitioner was holding the post of a trains clerk to which he had been confirmed with effect from 17-10-1947 by a letter dated 8-11-1949 issued by the Divisional Personnel

Officer, Dinapur.

4. The petitioner was originally appointed in the East Indian Railway Department in the year 1938 as a porter in the inferior grade on a salary of Rs. 11/- per month. In the year 1940 he was gradually promoted to the post of a pointsman and thereafter, it is said, on 29-2-1944, he was selected by a selection board consisting of three senior scale officers for the post of an outdoor clerk and was thereupon posted by the Divisional Superintendent, Dinapur, from July 1944 as a class III staff in the capacity of an assistant trains clerk. In the year 1947 he passed the guard's duty examination and acted for a short period from October 1947 to April, 1950 as an independent goods and passenger trains' guard. During this period while he was acting as the guard, he was on 8-11-1949, informed, as already stated above; that he was confirmed in the post of an assistant trains clerk with effect from 17-10-1947. On 22-4-1950, the petitioner, it is said, was allowed by the Divisional Superintendent, Dinapur, to appear before the selection board for the post of a guard C, which was to be held on 1-5-1950.

It has been admitted in the counter-affidavit that in the course of that selection he was in fact found suitable for the post of a guard C but he could not be absorbed as such as the number of vacancies was subsequently reduced. The petitioner, therefore, in connection therewith, as it appears from the papers on the record, wanted to send certain representation to the higher authorities through his immediate officer Karam Singh, who was then the Station Master at Gaya, and under whom he was then working there. The Station Master, it is alleged "was, however, not willing to forward that representation to the higher authorities without being paid for it. This, it appears, led to a controversy between him and Karam Singh. In the course of that controversy, he is said to have made certain allegations against Karam Singh giving rise to a proceeding against the petitioner and that ultimately resulted in his removal from the service by the order dated 7-2-1953.

5. The counter-affidavit filed on behalf of the opposite parties shows that the allegations, which formed the subject-matter of the proceeding against the petitioner, were made by the petitioner on 4-10-51, and were mainly two in number; firstly, that the petitioner was coerced to pay to Karam Singh Rs. 50/- as bribe and, secondly, that the petitioner was forced to procure woman for him for immoral purpose. To enquire into these allegations the railway department constituted a fact finding committee comprising of three senior scale officers (1) Divisional Personnel Officer (2) Senior Superintendent, Ways and Works, and (3) A. K. Sarkar, Superintendent Transportation. That fact finding committee, it is claimed, found that the charges brought by the petitioner against Karam Singh were not established and that as a matter of fact the petitioner was himself on his own admission responsible for doing those acts.

On this finding the petitioner was charge-sheeted on 19-9-1952 and he was provided with a copy of the charge-sheet, wherein the charges against him were

given, the relevant portion of which was in the following terms:

In your letter dated 4-10-1951 addressed to the Chief Operating Superintendent, Calcutta, and the Divisional Superintendent, Dinapore, you have Stated

(a) that you paid a bribe of Rs. 50/- to Shri Karam Singh, SM/Gaya.

(b) that you procured or attempted to procure women for the immoral use of the said Station Master.

Also at a Senior Officers* enquiry which was held to investigate your allegations against Shri Singh you confirmed the above mentioned statements.

You are hereby called upon to show, cause why you should not be punished with the penalty of removal from service as an employee who on his own admission does or is prepared to do what you have stated to have done, to serve your own ends which actions amount to serious misconduct, cannot be considered suitable for retention in Govt. service."

This charge-sheet, as it appears from Annexure-A to the counter-affidavit, was perhaps prepared on a printed form wherein a reference is made of Rule 1702 of the State Railway Establishment Code, Vol. I, mentioning therein a list of penalties. In reply to the charge the petitioner showed cause on 9-10-1952 and submitted further explanation in supplement to it on 21-10-1952. In his show cause filed on 9-10-1952, he had prayed that a full-fledged enquiry should be held in the matter. It appears from the letter dated 13-10-1952 written by the Divisional Superintendent, Dinapur, that the department accepted his request for an enquiry into his case & constituted a committee of two members, namely (1) Divisional Personnel Officer & (2) the Superintendent, Commercial, Dinapur, for it. This committee began its work on 14-1-1953 at Dinapur. The enquiry took a few days and on its completion the departmental committee submitted a report on 28-1-1953. Thereafter the Superintendent Transportation, Dinapur, by a letter of the same date, that is, 28-1-1953, gave a notice to the petitioner that he on a consideration of the explanation submitted by him on 21-10-1952, and on a consideration of the proceedings of the senior officers' enquiry had provisionally formed the opinion that he should be removed from his service and asked him to show cause as to why the proposed penalty should not be inflicted on him.

In answer to this notice the petitioner submitted a fresh explanation on 6-2-1953 which was received at the office on 7-2-1953. On a consideration of this explanation, it was decided finally to remove the petitioner from the service and accordingly the petitioner was removed by a letter dated 7-2-1953 written by the Superintendent Transportation, This letter reads:

"As your services are no longer required by the administration, you are hereby removed from service by my order in terms of your condition of service and you are hereby given one month's pay in lieu of notice with effect from 9-2-1953 as provided for therein.

Your, service will accordingly terminate on the forenoon of 9-2-1953 (forenoon).

You are to hand over to the Station Master, Dehrion-Sone all railway property, if any, which is in your possession and let me know where and how you wish to be settled up and receive payment of your dues.

You must vacate the railway quarters if provided with any, latest within seven days from the date you cease to be in service. If you fail to vacate railway quarters, you will be treated as a trespasser and shall be liable to pay damages for such unauthorised and wrongful occupation of the same."

It is this order against which the present application under Art. 226 has been filed by petitioner for the reliefs already stated above.

6. Mr. Bindeshwari Prasad Sinha appearing for the petitioner in support of this application has substantially raised two questions: firstly that the order of removal is void and illegal and that for two reasons (a) that the petitioner was not-removed by an authority contemplated by the Indian Railway Establishment Code and (b) that in any case he was not removed by an authority equal in rank to that by which he was appointed and, secondly, that he was not given a reasonable opportunity of showing cause against the charges framed against him in the course of the departmental enquiry held in this case.

7. In developing point I(a), Mr. Bindeshwari Prasad Sinha has contended that the order dated 7-2-1953 on the face of. it suggests that the action against the petitioner was taken under the proviso to Rule 1708 of Vol. I of the Indian Railway Establishment Code (hereinafter to be referred to as Code) and that being so, the order of removal passed by Mr. A. K. Sarkar, Superintendent Transportation, on 7-2-1953 is void and illegal, as under that rule a railway servant cannot be removed by any authority other than the General Manager or a competent authority to whom the power has been delegated by him in accordance with that proviso.

8. A reading of the different rules given in Section II of Chap. XVII dealing with conduct and discipline shows that a railway servant may be removed in two ways. Firstly, under the proviso to Rule 1708 in exceptional circumstances by the General Manager or by an authority to whom that power has been delegated by the General Manager in accordance with that proviso. In a case of removal under this proviso a railway servant may be removed without application of the procedure described in the rules in that section. Secondly, a railway servant may be removed under Clause (ii) of Rule 1704 in which case the procedure laid down in Rule 1709 has to be followed. This, as I have already stated, is clear from the different rules given in Section II of Chap. XVII of the Code. Chapter XVII has got three sections. Section I has only one rule in it, namely, Rule 1701 and it deals with conduct rules, Section II, which has in it rules beginning from 1702 to 1727, deals with discipline and appeal rules for non-gazetted staff; and the last section, namely, Section III which includes in it rules beginning from 1728 to 1743, deals with discipline and appeal rules for gazetted officers.

It is the admitted case of the parties that the petitioner was at the relevant time a member of the non-gazetted staff. In his case, therefore, Section II of Chap. XVII, under which Rule 1708 falls, was undoubtedly applicable. That section, as already stated above, contains a number of rules. Rule 1702 mentions the list of penalties which may be imposed upon the railway servant. In Rule 1704 are given the authorities competent to impose penalties. That rule has got two clauses. Clause (1) read with Sch. I appended to the rules in Chap. XVII of the Code provides the list of authorities empowered to impose penalties on railway servants employed in the (1) Railway Board's office, (2) Offices of the Central Publicity Officer, Chief Mining Engineer, Senior Government Inspectors and Government Inspectors and (3) Central Standards Office. The petitioner was not at the time of his removal attached to either of these offices. Therefore Clause (1) is not applicable to his case. Clause (ii) deals with the authorities empowered to impose penalties on a railway servant other than those mentioned in Clause (i).

That reads:

"(ii) The General Manager, in respect of railway servants under his administrative control, may impose any of the penalties specified in R.1702 and may, subject to any conditions he may consider necessary, delegate to the authorities subordinate to him power to impose these penalties except the withholding of provident fund contribution and gratuity and the reduction or withholding of pension....."

Clause (ii) is subject to two provisos (a) and (b). Proviso (b) deals with the power of dismissal and removal of inferior servants with less than seven years' service. That, therefore, has no application to the present petitioner, who is a member of the subordinate service and not of inferior service. Proviso (a) is in respect of railway servants other than inferior servants with less than seven years' service. It reads:

"(a) that in respect of railway servants, other than inferior servants with less than seven years' service, the power of "dismissal" shall not be delegated to an authority lower than a Head of a Department or a Divisional Superintendent or, in relation to the North Western Railway, a Deputy General Manager; and the power of "removal" from service shall not be delegated to an authority lower than a District Officer provided that in case of incivility to the public to be dealt with under Rule 1709(c), the power of removal from service shall not be delegated to officers below the rank of those specified in that rule."

In the case of the petitioner the punishment imposed is that of removal and that not on the ground of incivility to the public. Therefore, in his case the power of removal from service cannot be delegated to an authority lower than a District Officer. The petitioner was at the time of his removal serving as an assistant trains clerk in the Transport Department and at that time the District Officer of that department was Mr. A. K. Sarkar, who was then holding the post of

Superintendent Transportation. It is admitted that the order of removal against the petitioner was passed by Mr. A. K. Sarkar. The power of imposing penalties provided in Clauses (i) and (ii) of Rule 1704 is, however, subject to the limitation specified in Rule 1705. That rule has got four clauses. Clause (c) of that rule deals with removal and dismissal. That reads:

"(c) no railway servant shall be removed or dismissed by an authority lower than that by which he was appointed to the post held by him sub-stantively".

This clause, therefore, when read with proviso (a), of Clause (ii) of Rule 1704 suggests that the authority which could pass the order of removal against the petitioner on 7-2-1953 had to possess two qualifications; firstly, that he should have been either the General Manager himself or if he was an authority to whom the power had been delegated by the General Manager, he should have been an authority not lower than a District Officer and, secondly, that that authority should not have been lower than that by which the petitioner was appointed to the post which he held then substantively.

Rule 1705 is followed by Rules 1706 and 1707 which deal with penalty and dismissal. Rule 1708 lays down the grounds on which a railway servant may be dismissed and Rule 1707 deals with the procedure to be followed in the case of passing orders for dismissal. Then come Rules 1708 and 1709. Rule 1708 deals with the ground on which a railway servant may be removed, while Rule 1709 deals with the procedure to be followed in the case of removal. In Rule 1708, however, there is a proviso which deals with the power given to the General Manager to impose the penalty of removal in exceptional circumstances. This power of removal given to the General Manager under the proviso to Rule 1708 is, I think, different to the power of removal given to the General Manager or the authority to whom that power has been delegated by him under Clause (ii) of Rule 1704. In the exercise of the power given to the General Manager under the proviso to Rule 1708, a railway servant may be removed without application of the procedure described in the rules in Section II of Chap. XVII of the Code while the power given under Clause (ii) of Rule 1704 has to be exercised in accordance with the procedure laid down in Rule 1709. Rule 1708 reads as follows:

"A railway servant shall be liable to be removed from the service in the following circumstances viz.,

- (i) inefficiency,
- (ii) committing any offence for which he may be dismissed under Rule 1706, (iii) repeated minor offences,
- (iv) absenting himself or overstaying sanctioned leave, without sufficient cause,
- (v) incivility to the Public;

Provided that nothing in these rules shall abrogate the right of a General Manager in exceptional circumstances to remove a non-pensionable non-

gazetted railway servant from service in terms of his agreement without application of the procedure described in the rules in this Section and without assigning any reasons if he considers it desirable to do so. This power shall not be delegated to an authority lower than a Head of a Department."

The petitioner was, as it appears from the papers, removed from service on the ground of serious misconduct, , which is mentioned in Clause (ii) of Rule 1706 and thus included in Clause (ii) of Rule 1708. The order of removal, as already stated, could be passed in two ways, firstly, in accordance with the procedure given in the proviso to Rule 1708 or secondly, according to the procedure laid down in Rule 1704. Rule 1709 reads:

"(a) Subject to the provisions of Clause (c) below, when a Railway servant who has completed seven years" continuous service is charged with an offence meriting removal from the service under Rule 1708, the procedure outlined in Rule 1707 shall be applied: provided that the officer competent to pass the order of discharge may dispense with the departmental inquiry and make an enquiry in any manner deemed proper by him, recording his considered opinion, before passing the order of discharge. Where a departmental inquiry is dispensed with and if, thereafter, the railway servant asks to be heard in person the officer competent to pass the order of discharge shall grant the railway servant a personal interview at which the, former may be accompanied by another railway servant.

(b) Where the railway servant whom it is proposed to remove from service has not completed seven years" service the procedure prescribed in Rule 1712 shall be applied.

(c) In cases of incivility to the public, principal Officer or Heads of Departments, Divisional Superintendents, Deputy General Managers and Deputy Heads of Departments have authority to order removal of a non-gazetted railway servant from the service after application of the procedure prescribed in Rule 1712 irrespective of the length of Service of the railway servant concerned."

It is clear that the petitioner had completed seven years" continuous service when he was charged with the offence resulting in his removal from service under Rule 1708. Therefore, the procedure applicable in his case under this rule was the one laid down in Rule 1707 subject to the condition that the officer competent to pass the order of discharge could dispense with the departmental enquiry and make an enquiry in any manner deemed proper by him, on recording his considered opinion before passing the order of discharge. In the case of the petitioner it is admitted that an enquiry was made but it is, however, not clear from the papers on the record as to whether it was a full fledged departmental enquiry of a less formal type. Unfortunately the order of discharge is not on the record which could throw light on this matter. All that appears is that an enquiry was held and the petitioner was examined in person in the course of that enquiry. Most likely the enquiry as it appears from the facts stated

in the affidavit was of a departmental character as contemplated in Clauses (c), (d) and (e) of Rule 1707. Rule 1707 says:

"When a railway servant is charged with an offence the maximum penalty for which is dismissal, the procedure for holding an inquiry shall be as follows:

(a) A chargesheet shall be presented to the railway servant detailing the charge or charges against him and calling upon him to show cause why he should not be dismissed or removed from service or punished with any of the lesser penalties specified in Rule 1702. He shall be required to submit a written explanation by a fixed date, which shall ordinarily allow him an interval of seven clear days from the date he (sic) the" charge-sheet- If the railway(sic) terate or semi literate, the cha(sic) read out and explained to (sic) Officer or a selected Senior non-gazette (sic), servant, who shall record railway servant's explanation.

(b) The chargesheet with the explanation furnished by the railway servant shall be considered by the officer competent under these rules to pass an order of dismissal who unless he takes steps for holding a departmental inquiry, shall thereupon pass such orders as he thinks fit.

(c) If the railway servant asks to be heard in person or if the officer competent to pass an order of dismissal considers that the railway servant should be examined in person, he shall cause a departmental inquiry to be held.

The railway servant, if he so desires, may be accompanied by another railway servant and the officer or the committee of inquiry shall give the railway servant all reasonable facilities for the conduct of his defence including the cross-examination of witnesses.

(d) At such an inquiry a definite charge in writing shall be framed and explained to the railway servant in respect of each offence which has not been admitted by him, and the evidence in support of it, as well as his defence along with any evidence which he may adduce in defence shall be recorded in his presence:

Provided that for special reason to be recorded in writing the officer or the committee of inquiry may refuse to call any witness suggested by the railway servant and may decide that the evidence of any witness should be taken and recorded ? otherwise than in the presence of the railway servant.

(e) The result of the departmental inquiry, with the recommendation of the officer or the committee holding the inquiry shall be placed before the officer competent under the rules in this section to pass an order of dismissal, who shall thereupon pass such orders as he thinks fit.

(f) Notwithstanding anything- contained in the foregoing clauses of this rule, no formal inquiry is necessary when the order of dismissal is passed on the strength of facts or conclusions arrived at by a judicial trial or trial by. Court martial or when the accused is absconding."

Mr. Bindeshwari Prasad Sinha, however, has contended that the order dated

7-2-1953 removing the petitioner from service was not passed in the exercise of the power given to the General Manager under Clause (ii) of Rule 1704 and, therefore the order was not passed in accordance with the procedure laid down in Rule 1709 read with Clauses (c), (d) and (e) of Rule 1707. According to him, that order was passed in the exercise of the power mentioned in the proviso to Rule 1708. That proviso has been quoted above. It deals with the special power of the General Manager. Under that power he may remove a non-gazetted servant from service in terms of his agreement without the application of the procedure described in the rules in Section II of Chap. XVII and without assigning any reason if (sic) considers it desirable to do so and also can (sic) to other authorities but subject (sic) he cannot delegate it to an (sic) an the Head of a Department. (sic) to the petitioner, at the time of his (sic)val the Head of the Department was the Chief Operating Superintendent, Howrah, and not Mr. A. K. Sarkar, Superintendent, Transportation. It was, therefore, contended that Mr. A. K. Sarkar not being the Head of the Department at that point of time could not pass an order of removal against the petitioner in the exercise of the power laid down in the proviso to Rule 1708 and accordingly that order is void and without jurisdiction.

This part of the argument is based on the assumption that the order was passed in accordance with the law laid down in the proviso to Rule 1708 of the Code. In my opinion, there is no conclusive material on the record to accept this assumption. Further there is nothing to show that this order dated 7-2-1953 was passed against the petitioner under exceptional circumstances as laid down in the proviso to Rule 1708. It is true that the opening part of the order says that the removal was made in terms of his conditions of service and that he had been given one month's salary in lieu of notice with effect from 9-2-1953, as provided for therein. This is no doubt susceptible, on the face of it, to the interpretation that the order of dismissal was passed in accordance with the law laid down in the proviso to Rule 1708. But the mere superficial form of the order alone cannot be held conclusive of this point. Substance of the entire procedure followed in this case has also to be looked into to find out as to whether the order was passed in accordance with the procedure laid down in the proviso to Rule 1708 or in accordance with the procedure laid down in Rule 1709 read with Rule 1707. The facts leading to the order of dismissal have been elaborately stated above and they, in my opinion, conclusively prove that the order of dismissal against the petitioner was not passed in accordance with the law laid down in the proviso to Rule 1708 of the Code but in accordance with the procedure laid down in Rule 1709 read with Rule 1707. Therefore, the contention submitted by learned Counsel referred to in point 1(a) above fails.

9. Next it was argued that even if the order of removal be accepted to have been passed under the procedure laid down in Rule 1709 read with Rule 1707 of the Code, the order is bad for the reason that it was not passed by the officer, competent under the rules to pass an order of removal and that in any case the authority which passed the order was lower than that by which the petitioner was

appointed to the post held by him sub-stantively, I have already stated above that the authority other than the General Manager, which can pass an order of removal in exercise of the power delegated to him by the General Manager, cannot be an officer lower than a District Officer as laid down in Clause (ii) of Rule 1704 read with proviso (a) and further that he cannot be lower than that by which the petitioner was appointed to. the post held by him at the time of his removal as laid down in Clause (c) of Rule 1705. Our attention was drawn to the regulations regarding disciplinary ations against non-gazetted staff including removal from, service, dismissal and rights of appeal published by the East Indian Railway.

Therein is a chart showing in its column 4 the different authorities to whom such powers have been delegated with a note that all authorities senior to those mentioned therein can also possess those powers. The case of removal from service is mentioned in item 8 of that chart and the cases of different members of the staff over whom the penalty can be imposed are given in three clauses (i) inferior staff with less than seven, years" service, (ii) all non-gazetted staff whose promotions are not controlled by the head-quarters, offices and (iii) all non-gazetted staff. The authority empowered to impose penalty of removal from service on the staff falling under Clause fi) is a junior scale or L. G. S. officer. This manifestly does not apply to the petitioner as he was not at the time of his removal, a member of the inferior staff.

10. In the case of those falling under Clause (ii) the authority empowered to impose penalty, as mentioned in column 4 of that chart, is a senior scale officer while in the case of those falling under Clause (iii) the authority mentioned is the head of department and Deputy General Manager, Personnel. Mr. Bindeshwari Prasad Sinha contended that the petitioner belonged at the relevant time to the staff falling under Clause {iii}. In my opinion, there is no substance for this contention. It is clear that the petitioner at the relevant time belonged to a non-gazetted staff and further there is no doubt that his promotion at that time was hot controlled by the headquarters officers.

11. There is nothing on the record to show that in fact his promotion was controlled by the headquarters officer. I, therefore, think that his case falls under Clause (ii) and, therefore, in his case his juniormost authority competent to impose penalty, according to the chart referred to above, was a senior scale officer. The petitioner, was admittedly removed by an order passed by Mr. A. K, Sarkar and it is obvious on the face of it that Mr, A. K. Sarkar was at that time a District Officer and belonged to the senior scale cadre. That being so, it cannot be said that the order of removal in the case of the petitioner was passed by an officer to whom the General Manager could not delegate the power under Clause (ii) of Rule. 1704 read with proviso (a) attached to it. Therefore, the contention of Mr. Bindeshwari Prasad Sinha on this point also fails.

12. So far as the other part of this question is concerned, namely, whether Mr. A. K. Sarkar, Superintendent Transportation, was an authority lower than that by

which the petitioner was appointed to the post held by him substantively, it is clear that it depends necessarily on the answer to the question as to who was the authority by which the petitioner was appointed to the post held by him substantively. The letter dated 18-8-1949, which is annexure A to the application of the petitioner, shows that he had been confirmed as an assistant trains-clerk by the order of the Divisional Personnel Officer, Dinapur. This, therefore by implication suggests that he was appointed by the Divisional Personnel Officer, Dinapur.

13. So far as the application filed by the petitioner is concerned; it does not state specifically as to who was the authority which had appointed him to the post of the assistant trains clerk. The counter-affidavit filed on behalf of the opposite parties on the other hand specifically states that it was the Divisional Personnel Officer who had appointed the petitioner, and this gives support to the implication arising from the letter dated 18-8-1949. This statement has not been controverted anywhere by the petitioner even in his reply to the counter-affidavit. All that he says on this point in his reply to the counter-affidavit is that "the General Manager being the only appointing authority, the Divisional Personnel Officer is not the competent authority to appoint a Class III staff to which the petitioner belongs, and that the D. P. O. was not the appointing authority of the petitioner nor D. P. O. had any delegated authority from the General Manager." This statement is, therefore, silent on the specific point as to who in fact was the authority which appointed him. Mr. Bindeshwari Prasad Sinha, however, relying on Rule 135 of Vol. 1 of the Code contended, that the petitioner must have been appointed by the General Manager as the power given to the General Manager to appoint a member of the subordinate staff under that rule, according to him, cannot be delegated to any other authority.

Rule 135 reads.

"The authorities competent to make first appointments to non-gazetted posts in the offices detailed below shall be as shown against each.

- (a) Office of the Railway Board--Secretary to the Railway Board,
- (b) Other offices directly under the control of the Railway Board--Head of Office.
- (c) Railway Clearing Accounts Office--Director. Railway Clearing Accounts Office.
- (d) Indian Railways--The General Manager, or Lower authority to whom he may delegate the power.

Provided that

1. no appointment shall be made unless a sanctioned post exists, against which it can be made;
2. the authorities empowered by or under that rule to make first appointments, may, subject to such conditions as they may impose, delegate to a lower authority the power to appoint inferior servants."

The clause relevant in the case of the petitioner for his appointment in class III staff is one given in Clause (d) of this rule. That says that the appointing authority is "The General Manager, or lower authority to whom he may delegate the power." This clause, on the face of it, does suggest that the power given to the General Manager can be delegated. Mr. Sinha in his argument contended that this Clause (d) has to be read along with proviso (2) and when so read it suggests that the power in General Manager to appoint a member of the subordinates staff cannot be delegated. Proviso (2) says that "the authorities empowered by or under this rate to make first appointment, may, subject to such conditions as they may impose, delegate to a lower authority the power to appoint inferior servants." Mr. Sinha's contention is based on the assumption, that proviso (2) deals with the authority of the General Manager also and therefore the General Manager can delegate to the lower authority only the power to appoint inferior servants and not the authority to appoint members of the subordinate staff to which the petitioner belonged at the time when he was dismissed. In my opinion, this contention is not sound.

It is true that proviso (2) is not very happily worded but the proviso has to be read along with the rule itself. The power of delegation given to the General Manager is dealt with in Clause (d) of Rule 135 while the power of delegation given to other officers mentioned in the rule is given in proviso (2) of that rule. It is, therefore, obvious that the power of delegation given to the General Manager is not in any way based on the provision made in proviso (2) of Rule 135 but is based exclusively on the provision made in Clause (d) of Rule 135 itself. Clause (d) of Rule 135 by itself does not place any limitation on the General Manager in the matter of delegation of his power to the lower authorities though proviso (2) does restrict the power of delegation given to other officers thereunder and it is confined to the extent of delegating the power of appointing inferior servants only. If proviso (2) and Clause (d) are read consistently as they should be read, it is clear that the limitation placed on the power of delegation in proviso (2) cannot be applied to the power of delegation given to the General Manager under Clause (d). That limitation is clearly confined to the power of delegation which has been given to other officers other than the General Manager under that proviso. This interpretation of Clause (d) and proviso (2) of Rule 135 finds support from the language used in other rules as well which I need not mention here in detail.

I, therefore, hold that the contention of Mr. Bindeshwari Prasad Sinha that the appointment of the petitioner could be made by the General Manager only and was in fact made by him is not sustainable. The circumstances on the record, on the other hand, as already dealt with above, indicate otherwise. It has accordingly to be accepted that the petitioner was appointed by the Divisional Personnel Officer, Dinapur. That being so, the next question that deserves consideration is as to whether Mr. A. K. Sarkar, Superintendent Transportation, who passed the order of dismissal on 7-2-1953, was an officer lower than the Divisional Personnel Officer by whom the petitioner was appointed to the post of

assistant trains clerk. In para. 8 of the counter-affidavit it has been stated that "Sri A. K. Sarkar, the then Superintendent Transportation, Dinapur, was equal in rank to the Divisional Personnel Officer who had appointed the petitioner, both being Senior Scale Officers of the Railway..." this statement of fact has again been not controverted anywhere; neither there is any evidence on the record to suggest that Mr. A. K. Sarkar was not at the relevant time equal in rank to that of the Divisional Personnel Officer. I, therefore, think (hat there is no doubt that Mr. A. K. Sarkar who passed the order of removal, was an authority not lower than the Divisional Personnel Officer by whom the petitioner was appointed to the post of assistant trains clerk. In that view of the matter, the order cannot be held void or illegal in law even on this ground.

14. The last point contended was that in the course of departmental enquiry held in the case of the petitioner under Rule Z709 read with Clauses (c), (d) and (e) of Rule 1707 of the Code no reasonable opportunity of showing cause was given to him with the result that he was prejudiced in his defence. Clause (c) of Rule 1707 says that the committee of enquiry shall give the railway servant reasonable facilities for the conduct of his defence including Cross-examination of witnesses. , Clause (d) says that the evidence in support of the charge as well as the defence of the servant along with any evidence which he may adduce shall be recorded in his presence. These two provisions are, however, subject to a rider which says:

"Provided that for special reasons to be recorded in writing, the officer or the committee of inquiry may refuse to call any witness suggested by the railway servant and may decide that the evidence of any witness should be taken and recorded otherwise than in the presence of the railway servant."

15 The main points which have" been alleged to support this part of the contention, namely, that no reasonable facilities were given to the petitioner for the conduct of his defence in the course of the enquiry held, under Rule 1709 read with Clauses (c), (d) and (e) of Rule 1707 of the Code are three--(1) that the petitioner in spite of repeated request to that effect was not provided with copies of some of the papers connected with the enquiry held by the fact finding committee; (2) that in spite of persistent request on the part of the petitioner, the departmental enquiry committee did not examine the defence witnesses cited by him; and (3) that Mr. A, K. Sarkar was examined in the course of departmental enquiry on 24-1-1953 behind the back of the petitioner and that the petitioner was not given an opportunity to cross-examine him.

16. In my opinion there is no substance in the first point. The papers connected with the facts finding committee had nothing to do with the departmental enquiry which was held by the Divisional Personnel Officer and the Superintendent, Commercial, Dinapur. This departmental enquiry had to give its finding on the evidence brought before it and not on the evidence which was recorded before the fact finding committee. The fact finding committee was constituted to enquire into the allegations made by the petitioner against Karam

Singh while the present departmental enquiry was directed against the petitioner on the charges framed against him. The purpose and scope of the two enquiries were entirely different. The question which was enquired into in this enquiry was as to (a) whether he paid a bribe of Rs. 50/- to Sri Karam Singh, Station Master, Gaya and (b) whether he procured or attempted to procure woman for the immoral use of the said Station Master.

The letters written by the petitioner to the railway authorities for copies of the papers connected with the fact finding committee show that he wanted them in order to establish his allegations against Karam Singh which had already been enquired into and found not proved by the fact finding committee. Those allegations were not the subject-matter of enquiry before the departmental enquiry committee. It is therefore, clear that those papers were not at all relevant for the purpose of enquiry against the petitioner on the charges mentioned in the chargesheet. I, therefore, think there is no substance in this point.

17. In support of the second point the learned Counsel appearing for the petitioner relied on his explanation which he submitted on 21-10-1952 in supplement to his show cause filed on 9-10-1952. This forms Annexure 7 to his reply to the counter-affidavit. In the last paragraph of that explanation the following persons are named whom the petitioner wanted to examine as his defence witnesses:

- "1. Shree R. S. Choudhury A. S. I. under S. P. Hazaribagh (at present).
2. Shree M. P. Varma, Assistant Secretary Railway Employees* Union Branch Office, Dina-pur (Clerk accounts office).
3. Shree T. D. Prasad, the then A. P. O. Dinapur.
4. Shree K. L. Chatterjee the then dealing clerk (A. T. C.) Establishment, Dinapur.
5. Shree M. S. Khan, Head Clerk S. M.'s Office, Gaya,

That these five persons should be called as they are important witnesses of this case."

18. This request was again repeated by him in his letter dated 21-11-1952, which forms Annexure 8, to his reply to the counter-affidavit. And then for the third time, he referred to this matter in his letter dated 14-1-1953 which forms Annexure 11 to the reply to the counter-affidavit. This last letter was submitted on the very day when the departmental enquiry began against the petitioner and the endorsement on it shows that it was received also by Mr. B. B. Dutt on the same date. These letters, therefore, do support the contention of the petitioner to the extent that in the course of the enquiry he had given a number of names to the enquiry committee to be examined as his defence witnesses and the record of the case before us unambiguously indicates that the evidence of these defence witnesses was not taken by the committee. This, therefore raises the

question as to whether all reasonable facilities for the conduct of his defence were given to the petitioner in the course of the enquiry.

According to Mr. Bindeshwari Prasad Sinha, non-examination of the defence witnesses cited by the petitioner amounted to a denial of reasonable facilities to him for the conduct of his defence. In my opinion, this question requires a close examination of the explanation submitted by the petitioner on 21-10-1952, his letter dated 21-11-1952, and lastly his letter dated 14-1-1953, wherein requests were repeatedly made for the examination of his defence witnesses, in order to find out as to the purpose for which these defence witnesses were cited by the petitioner in the course of the departmental enquiry.

In this explanation dated 21-10-1952 he says:

"I had selected the names of persons given below for their evidence against Shree Karam Singh's actions and who were neglected to be called at."

This statement is followed by a list of witnesses already quoted above. In his reminder on this point, which he wrote on 21-11-1952, he states:

"That no advice has been given to the witnesses whose presence before the Enquiring Committee is most essential as has already been requested by me as twice (1) as dated on 21-11-51 before the beginning of the Enquiry Committee at Gaya and (2) again by my letter No, nil dated 21-10-52 from Dehri-on-Sone."

The first request referred to in this statement was definitely made before the fact finding committee and it was, therefore, not connected with the present departmental enquiry in which the charge-sheet was drawn for the first time on. 19-9-1952. That being so the witnesses, who were referred to in his first request, must be the persons cited to support the allegations made by him against Karam Singh. The second request referred to in the aforesaid statement was no doubt made by the petitioner before the departmental enquiry committee but the letter dated 21-10-1952, the relevant portion of which has been quoted above, shows that the witnesses mentioned therein were also cited only for the purpose of supporting his allegations against Karam Singh. The last letter on the question of defence witnesses was written by him on 14-1-1953. Therein he says:

"Besides, please let me know the cause of not Issuing me the copies of the report of the fact finding enquiries and full proceedings of my whole case, and for not arranging the witnesses which is most essential for my case up till now."

This letter read in the light of the previous letters also suggests that the witnesses referred to therein were cited by him to support his allegations against Karam Singh. In substance, therefore, what the petitioner wanted to prove, as it appears from these three documents, through the defence witnesses, whom he was anxious to examine, were his allegations against Karam Singh and not to disprove the charges framed against the petitioner. In that view of the matter, it is obvious that the facts which the defence witnesses of the petitioner wanted to prove were not at all relevant to the matter which was under enquiry before the

departmental enquiry committee. That being so, the members of the departmental enquiry committee were perfectly justified in not giving an opportunity to the petitioner to examine those witnesses, as they were to depose on the points beyond the scope of the enquiry. Therefore, the non-examination of those witnesses in the circumstances stated above could not and did not result in any prejudice to the petitioner in meeting the charges framed against him.

19. Further it appears from the evidence of the petitioner himself given before the departmental enquiry committee that he admitted to have paid Es. 50/- to Karam Singh so that he might be disposed to pass necessary orders in his favour. He also admitted before the enquiry committee that he handed over the money to the Station Master personally that there was nobody present who witnessed him giving the money to Station Master. In the light of these admissions made by the petitioner himself, it is obvious that the witnesses cited by him could not throw any light on the facts connected with the first charge against him, namely, that he paid a bribe of Rs. 50/- to Karam Singh, Station Master, Gaya.

20. The second charge against him was that he procured or attempted to procure women for the immoral use of the Station Master. In his statement before the enquiry committee he deposed that the other demand made by the Station Master front him was that the petitioner should procure young girls for immoral use by him. Apart from this statement, in his letters dated 4-10-1951 addressed to the Chief Operating Superintendent, Calcutta, the Divisional Superintendent, Dinapur, and the Branch Secretary of the E. I. R. Employees' Union, he stated:

"I somehow found a woman for him and made attempt to house her at a place near the S. M.'s bungalow, but this woman was rejected by him."

It appears that subsequently at a certain stage he was asked as to whether those letters had been written by him or not. In reply to that he wrote in his own pen to the effect that "I hereby certify that the above letter was written by me and that the signature above is mine" and when asked during the departmental enquiry, he admitted that this endorsement was in fact made by him.

He, however, wanted to give an explanation that the letter dated 4-10-51 written to the Chief Operating Supdt, Calcutta, and others was drafted by one B. P. Chatterji and that at that time he did not particularly notice the sentence, referred to above, written in that letter. This defence could have been proved only by the evidence of B. P. Chatterji. The list of witnesses cited by the petitioner whom he wanted to examine as his defence witnesses shows that B. P. Chatterji was not one of them and the witnesses who were in fact cited were those connected with the charges which the petitioner wanted to prove against Karam Singh, Therefore, on this charge also the defence witnesses" cited by the petitioner could not throw any light and in that view of the matter the members of the enquiry committee, I think, were justified not to examine them. For these reasons it cannot be said that the non-examination of the witnesses cited by he petitioner in the course of the enquiry resulted in any prejudice to him or

amounted to any denial of substantial facilities for the conduct of his defence.

The learned Government Advocate appearing for the opposite parties in this connection submitted two more points. His first contention was that under the proviso to Clause (d) of Rule 1707 the committee of enquiry had the power to refuse to call any witness suggested by the petitioner and could decide that the evidence of any witness should be taken and recorded otherwise than in the presence of the railway servant, and further under Rule 1709 the officer competent to pass the order of discharge could dispense with the departmental enquiry and make an enquiry in any manner deemed proper by him. That being so, the mere non-examination of the witnesses cited by the petitioner in the course of departmental enquiry cannot have, according to him, the effect of invalidating the proceeding of the enquiry or the order passed by the ultimate authority on the basis of its report. In my opinion, the contention of the learned Government Advocate is not without substance.

It is true that it would have been better for the department to place before the Court the order, if any, which was made by the departmental enquiry committee for not following the normal procedure. But for that the petitioner has to be blamed equally. These matters were not specifically pleaded by the petitioner in his original petition and, therefore, it could not be judged by the department as to what were the papers necessary to be brought on the record of this case. In view of that, the technical default on the part of the department not to produce in the Court the paper if any including in it reasons for exercising the power given in the proviso to Clause (d) of- Rule 1707 or for exercising the power given in Clause (a) of Rule 1709 cannot be said to have the effect of invalidating the proceeding or the order based on it.

The second contention of the learned Government Advocate was that after all the finding given by the departmental enquiry committee was not based on the evidence of any witness but exclusively on the admissions made by the petitioner himself. That being so, it was submitted that the evidence of any other witness could not have in the circumstances of this case affected the finding which was in substance based on admissions made by the petitioner. The finding submitted by the Committee, a copy of which was supplied to the petitioner and which has been shown to us in the course of hearing, reads as follows:

"We the undersigned, having carefully considered all the evidence, do find-

I(a) that even though there is no conclusive proof that the Station Master, Gaya-- Shri Karam Singh--demanded from or was paid Rs. 50/- by Shri Gaya Prasad, Asst. Trains Clerk, there is strong suspicion for accepting that this amount of Rs. 50/- was offered by Shri Gaya Prasad to Station Master, Gaya, to send him for eye-sight test with the object of obtaining promotion to a Guard's post.

(b) that Shri Gaya Prasad has definitely stated that he found a woman for the then Station Master Shri Karam Singh and made attempts to house her in a place near the Station Master's bungalow, but this woman was rejected by the Station

Master. Even though the fact - that he procured or attempted to procure this woman or other women for the immoral use in particular of the Station Master, has not been established, nevertheless Shri Gaya Prasad was in the full knowledge of the serious accusations he was making.

We, therefore, find Shri Gaya Prasad responsible for having done, on his own admission, what he has stated he did to serve his own ends." This finding lends sufficient support to this part of the argument advanced by the learned Government Advocate and it clearly suggests that the findings arrived at by the committee were exclusively based on the admission made by the petitioner. I, therefore, think that though technically it is true that the witnesses cited by the petitioner were not examined by the departmental enquiry committee, but this did not, in my opinion, in the circumstances of this case, cause any prejudice to him and further the procedure laid down in Clause (d) of Rule 1707 and that given in the proviso to Clause (a) of Rule 1709 does give the power to the authorities to refuse to examine any witness in such an enquiry and therefore for that reason also in a case like this the mere non-examination of the defence witnesses cannot be said to have invalidated the order.

21. It may be noted here that the departmental enquiry which was made against the petitioner on the charges framed against him was one made under the rules of the Indian Railway Establishment Code and this enquiry had nothing to do with the provision of law laid down in Article 311(2) of the Constitution which requires that a reasonable opportunity should be given to the man proceeded against to show cause against the action proposed to be taken in regard to him. In this case the stage for the compliance of the law laid down in Article 311(2) of the Constitution came after the enquiry by the departmental enquiry committee was completed. It has already been stated above that the Department on a consideration of the report of the departmental enquiry committee and also on a consideration of the explanations submitted by the petitioner gave a notice to the petitioner that they had affirmed the opinion that he should be removed from service and gave an opportunity of showing cause as to why the proposed penalty should not be inflicted on him.

In answer to that notice he did give an explanation but no grievance has been made before us or in the application filed by him that the reasonable opportunity of showing cause against the action proposed against him was not given, All that has been argued is that no reasonable facilities were given for the conduct of his defence in the course of the enquiry held under the rules of the Indian Railway Establishment Code. An enquiry, as pointed out by the learned Government Advocate, had to be done under the terms of the rules relevant for that purpose. Those rules, referred to above, were in my opinion fully followed and all facilities to which the petitioner was entitled to under the rules were given to him. I, therefore, think that there is no substance in the contention of Mr. Bindeshwari Prasad Sinha that reasonable facilities under the Indian Railway Establishment Code were not given to the petitioner.

22. Mr. Bindeshwari Prasad Sinha in the course of his argument on this point referred to three cases, namely, -- Ravi Pratab Narain Singh Vs. The State of Uttar Pradesh and Another, ; -- Shyam Lal Vs. State of U.P. and Another, and an unreported decision of this Court in -- "Gopi-kishore Prasad v. State of Bihar", M. J. C. No. 474 of 1953 disposed of on 19-1-1955 (C). None of these cases, in my opinion, is applicable to the facts of the present case and in none of them the finding was based on the admissions made by the person proceeded against. In the case reported in Ravi Pratab Narain Singh Vs. The State of Uttar Pradesh and Another, , the order challenged was one passed under the U. P. Court of Wards Act (4 of 1912) for the assumption of superintendence of the estate of the petitioner of that case by the Court of Wards. One of the grounds on which the order was challenged was that in making the declaration u/s 8, U. P. Court of Wards Act the State was discharging a quasi-judicial function and in doing so it had contravened the fundamental principles of natural justice by not hearing the proprietor and giving him an opportunity to repudiate the charges. In that case all the allegations made against the proprietor of the estate had been refuted by him in his show cause petition and he had requested that necessary enquiry should be made and he should be afforded a chance to controvert the charges made against him.

The State, however, on the receipt of the show cause petition did not give him any opportunity for hearing nor any further enquiry was made in the matter. On the contrary, a final order was passed soon after the receipt of the show cause. In those circumstances, this main contention centred round the interpretation of the words "opportunity of showing cause" used in the relevant section of that Act. The learned Judges, who decided that case, held:

"The, expression "showing cause" was considered to connote an opportunity of leading evidence in support of. one's allegations and in controverting such allegations as are made against one. With due respect we may at once say that we entirely agree with this interpretation of the words "opportunity of showing cause" used in sub-s. (2) of Section 8, U. P. Court of Wards Act, 1912. It is obvious that it cannot be said that an opportunity of showing cause was granted when the petitioner was only called upon to submit a written explanation, was not clearly told what the entire evidence available against him was arid was riot afforded any opportunity to adduce evidence to controvert the charges by. adducing his own evidence."

The case reported in Shyam Lal Vs. State of U.P. and Another, was one in which a member of the Indian Service of Engineers had been forced to retire compulsorily by an order passed by the President of India, and the application made by him against that order was filed on the ground that the officer was not given any reasonable opportunity to show cause against the action proposed to be taken against him, that he was merely asked to submit an explanation which he did but was not given an opportunity of controverting by evidence and argument the charges which were levelled against him or the remarks which

were made against him by the Chief Engineer. On those grounds the petitioner in that case contended that the order passed was in contravention of the rule of law laid down in Article 311 of the Constitution. The learned Judges, who heard that case, on a consideration of the submissions made by the parties observed:

"In our opinion, the expression "showing cause" as used in Article 311 does not imply that a mere opportunity of submitting an explanation is enough. It implies that adequate opportunity of leading evidence in support of the contentions of the person concerned and controverting the. contentions raised against him must be given; and where necessary, opportunity of cross-examining witnesses of the other side and of addressing arguments should also be afforded. No such thing was done in the present case."

The third case relied upon was that of -- "Gopi Kishore Prasad v. State of Bihar (C)", by a Division Bench of this Court. In that case a probationary Sub-Deputy Collector had been discharged from Government service by an order dated 23-7-1953 and the application was directed against that order. The grievance of the petitioner in that case was that

"The Government did not permit the petitioner to inspect the confidential reports sent by the Collector and the Commissioner and the Government also declined the request of the petitioner that he should be permitted to lead evidence or to cross-examine the Collector and the Commissioner upon whose reports the Government had taken action".

In deciding that point the learned Judges, who heard that case, held that

"It is clear in view of the amendment of Rules 49 and 55 that the petitioner was not entitled to a full enquiry as contemplated by para. (1) of Rule 55."

As to the other point, they said that "the petitioner was not shown the special reports of the Commissioner of Chotanagpore Division and of the Deputy Inspector General, Criminal Investigation Department, and there has been a violation of the principles of natural justice", and in coming to this order they were influenced by the fact that the authorities in passing the order against the Sub-Deputy Collector had taken into consideration those special reports.

23. In the present case, as already stated above, it is admitted that the petitioner was given opportunities to lead evidence and to examine himself and in the course of that he was being assisted by a lawyer. He had also filed show cause in answer to the charges framed against him. Therefore, the facts of this case are entirely different to the facts of the case reported in Ravi Pratab Narain Singh Vs. The State of Uttar Pradesh and Another, . The case reported in AIR 1954 Ail 235 (a) deals with the question as to what is meant by the expression "reasonable opportunity" used in Clause (2) of Article 311 of the Constitution and in that connection the learned Judges, who decided the case, made the observation which has been quoted above. I have already stated that in the present case that question does not arise for consideration and the petitioner has

not advanced any grievance that no reasonable opportunity was given to him of showing cause against the notice which the department gave to the petitioner intimating to him as to the action which was proposed to be taken against the petitioner. Therefore, that case is not of any assistance to the petitioner. The unreported case of this Court (M. J. C. No. 474 of 1953 (C)), also deals with matters entirely different to the facts of the present case as already stated above, I, therefore, think that these cases do not support the contention of Mr. Bindeshwari Sinha.

24. The third point raised on behalf of the petitioner in this case was that Mr. A. K. Sarkar was examined in the course of departmental enquiry on 24-1-1953 behind the back of the petitioner and that the petitioner was not given an opportunity to cross-examine him. It is true that the papers of the department, which have been shown to us, do show that Mr. A. K. Sarkar was examined by the departmental committee on the date alleged by the petitioner. It is, however, apparent from the report of the enquiry committee and also from the facts discussed above that the finding given by the committee was not at all based on the evidence of Mr. A. K. Sarkar, rather exclusively on the admissions made by the petitioner himself.

Further, as already stated above, the departmental enquiry committee had the power to examine any witness in the absence of the petitioner as laid down in the proviso to Clause (d) of Rule 1707 of the Code, already quoted above. I, therefore, think that the mere denial by the enquiry committee to the petitioner to cross-examine Mr. A. K. Sarkar did not cause any prejudice to him nor it amounted to any denial of reasonable facilities for the conduct of his defence as contemplated by Rule 1707 of the Code. Therefore, there is no substance in the contention advanced on behalf of the petitioner that he was not given a reasonable opportunity of showing cause against the charges framed against him in the course of the departmental enquiry held in the case.

25. The learned Government Advocate in opposing this application also contended that this application should be thrown out on the simple ground that the petitioner in support of his application under Article 226 of the Constitution suppressed all the material facts of the case and did not refer at all to any fact relating to the enquiry held against him and relating to the two opportunities given to him, firstly, to show cause against the charges framed against him, and, secondly, to show cause against the actions which were proposed to be taken against him. There is no doubt that the original application of the petitioner filed in this Court under Article 226 is completely silent on the facts just stated. In that application he has merely referred to the history of his service in the railway department, then dispute between him and Karam Singh, then the fact that Karam Singh got him removed from the service with the help of Mr. A. K. Sarkar, Superintendent Transportation, and- lastly to the point that the order of removal against the petitioner was not in accordance with Rule 1708 and, therefore, invalid. This, therefore, clearly supports the contention of the learned

Government Advocate that the petitioner completely withheld the material facts from the Court in his application under Article 226 & I think he on that ground alone forfeits his right for a writ as held in the case of -- Zabar Singh Vs. Baldeo Prasad and Others, .

The decision of this case is fully supported by the rule of law laid down in the case of -- "Rex v. Kensington Income Tax Commrs. (1917) 1 K. B. 486 . Therein Viscount Reading C. J. observed: "Where an ex parte application has been made, to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of application was not candid and did not fairly state the facts, but stated them in such a way" as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived". In this case the petitioner got the rule nisi issued on the mere allegation that the order passed was one under the proviso to Rule 1708 and did not disclose in the least about the enquiries held in the case against him. It is true that subsequently on the filing of the counter-affidavit by the State, the petitioner also made a full disclosure of all the facts but that was only a belated act to face the facts stated in the counter-affidavit filed by the State. I, therefore, think that the applicant was definitely guilty of suppressing the essential facts in his application. This therefore, is an additional ground on which the application should be dismissed.

26 Lastly, it was contended by the learned Government Advocate that under Article 226 of the Constitution this Court has got no power or jurisdiction to issue writs and directions against the Union of India as the Union of India is not within the territories over which the High Court ordinarily exercises jurisdiction. I must confess that I have not been able to follow this point very clearly and this point on the face of it does not seem to be acceptable. I, however, do not think it necessary to give my final opinion on this point in view of the fact that this application, as already stated, has to be dismissed on other grounds.

27. In the result, therefore, this application fails and the rule is discharged. In the circumstances of the case, no order for costs is passed.

28. Das, C.J.

I agree.